and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. V, in pertinent part:
No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. XIV § 1, in pertinent part:
[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983, in pertinent part:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. § 1654, provides:
In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

28 U.S.C. § 1738, provides:
The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States

and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

Petitioner Raymond Stacey and now deceased Plaintiff Helen Stacey filed their ***pro se*** federal Complaint on November 6, 2002, in U.S. District Court for the Western District of Pennsylvania. Mother and son filed their ***pro se*** action against the Respondents because of their involvement in and/or responsibility for the seizure and destruction of the Stacey family home and personal property on November 6, 2000, in the City of Hermitage, Mercer County, Pennsylvania. Both Plaintiffs urged civil conspiracy and diversity breach of contract claims, and Mrs. Stacey had additional claims against the lower state court judge and prothonotary (court clerk) for wrongful conduct that arose in the context of state-court injunction proceedings in Mercer County, Pennsylvania. Petitioner Raymond Stacey was ***not a party*** to his mother's state court injunction proceedings.

In the ***pro se*** Complaint, the Plaintiffs raised claims of civil conspiracy and diversity breach of contracts, , and federal constitutional claims under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the U.S. Constitution, pursuant to 42 U.S.C. § 1983 of the Civil Rights Act, a plea for federal and state investigations of a conspiracy under the Racketeer Influence and Corrupt Organizations (RICO)

statute, 18 U.S.C. § 1961 *et seq.*, and alleged violations of several Pennsylvania appellate and criminal laws.

The background to the federal Complaint is as follows:

In 1997, after heavy rains flooded the cellar of the Stacey home, the City of Hermitage (City) notified Helen Stacey that conditions on her property violated the City's Property Maintenance Code, and informed her that the City would seek to have her property declared a public nuisance. See *Helen Stacey v. City of Hermitage*, 789 A.2d 772, 773 (Pa.Commw.Ct. 2001).

In 1998, the City gave Helen notice that her property was in violation of the newly adopted Property Maintenance Code and demanded that she remedy alleged violations within 30 days. *Id.* She argued that the Stacey home/building was not in danger of collapse, but was structurally sound, was not a fire hazard, and that any outstanding code violations could be adequately repaired.

Helen Stacey appealed the City's findings on the condition of the family home to the City Board of Appeals. In April 1999, the Board ruled that the conditions on the property constituted a nuisance, i.e., the property was unsafe for human habitation because it was in danger of collapse from flood damage, was a fire hazard, and was littered with rubbish or garbage. *Id.*

Helen Stacey challenged these findings in an appeal to the Pennsylvania Court of Common Pleas in Mercer County. In April 2000, that court found that the Stacey building was not a fire hazard, but affirmed the rest of the City Board's findings. *Id.*

The City began action to have the family home demolished. In June 2000, the City notified Mrs. Stacey that

she must cure the structure's deficiencies within 30 days. Her son Raymond, who was her agent, had her contractor backfill the basement to remedy the problem, and asked the City for an extension of time to complete the repairs. The City denied the extension. *Id.*, at 773-774.

On August 30, 2000, Helen Stacey through her attorney filed a petition for a temporary injunction to prevent the City from demolishing the family home and to order the City Board to hold a hearing regarding the demolition. Her son, Petitioner Raymond Stacey, was **not a party** to the state court injunction proceedings.

Mrs. Stacey argued that she was arbitrarily denied a hearing before the Board on the issue of demolition of the family home which contained large amounts of uncondemned personal property, that she was not notified of her right to appeal the City's decision to bulldoze her residence, that the building was not without value and that all of its deficiencies could be repaired to Code. *Id.*, at 774.

Several times from August through November 6, 2000—on the known dates of August 28 and 31, October 19 and November 6—the City caused different groups variously comprised of City police, solicitor, commissioner, firemen, building inspectors, appraisers, utility workers and/or agents of the moving company or demolition company, to break into the Stacey home and search for evidence and seize and/or destroy real and personal property[3] without consent, warrants or court orders. At one point, the police chief physically removed Raymond Stacey from the home and threatened his arrest.

---

[3] Including irreplaceable family photographs, original artwork, tax returns and receipts, personal papers, heirlooms, collectible books and magazines, and much more

On August 30-31, 2000, the trial court granted Mrs. Stacey a temporary injunction restraining the City from proceeding with the demolition, and set a hearing for a permanent injunction. At the hearing on September 5, 2000, the trial court held that it was bound by its decision of April 19, 2000, that "the structure was unsafe, [that] it would be unreasonable to repair [and Helen] Stacey was not entitled to a hearing before the Board because no timely appeal was filed. Accordingly, the trial court entered a decree nisi vacating the temporary injunction." *Id.*, at 774

Two days later on September 7, 2000, pursuant to Pennsylvania appellate procedure, Mrs. Stacey through her attorney filed a notice of appeal with the prothonotary (clerk of courts) for an immediate appeal from the decree nisi. The clerk refused to docket or process the notice of appeal then when the decree nisi was entered, and again later on November 6, 2000, when the decree became final. The clerk's actions violated Pennsylvania's rules of appellate procedure. See Pennsylvania Rule of Appellate Procedure 311(a)(4)(ii) (immediate appeal from decree nisi dissolving injunction), Rule 902 (appeal as of right), Rule 905 (notice of appeal filed with prothonotary).

Mrs. Stacey also through her attorney filed exceptions to the decree nisi. On November 6, 2000, a final hearing was scheduled on her challenge to the dissolution of the temporary injunction. Her attorney failed to appear at the hearing, failed to inform the Staceys that the hearing was taking place, and failed to notify Helen Stacey that her earlier notice of appeal was not perfected.

At the final hearing, the trial court reaffirmed the decree nisi denying Mrs. Stacey a permanent injunction and dissolving the temporary injunction against the City's demolition of the family home. *Helen Stacey v. City of Hermitage*, 789 A.2d at 774. Within hours of the final order,

in the afternoon of November 6, 2000, the City had the Stacey home destroyed along with all of Petitioners' uncondemned personal property which was still inside.

Helen Stacey appealed the state trial court's final order to the Pennsylvania Commonwealth Court. The Commonwealth Court ruled that the only issue adjudicated at the injunction hearing was whether demolition of the Stacey home was the appropriate remedy for building code violations. *Id.*, at 774-775.

The only question addressed by the Commonwealth Court was whether or not the structure should have been demolished by the City. Mrs. Stacey argued that the City denied her a full and fair hearing on the issue of demolition, and denied her an adequate opportunity to make repairs. *Id.*, at 774-775.

The Commonwealth Court affirmed the trial court's order denying Mrs. Stacey injunctive relief, *id.*, at 777, i.e., the state appellate court concluded that demolition of the Stacey home was the appropriate way to remedy the building code violations.

Petitioner Raymond Stacey was ***not a party*** to the Pennsylvania state court injunction proceedings pursued by his mother, Helen Stacey. On November 6, 2002, they filed their ***pro se*** suit for damages in federal District Court for the Western District of Pennsylvania.

Plaintiff Helen Stacey died in May 2003, and her son, Plaintiff Raymond Stacey, as co-executor of her last will, was substituted in her place by the District Court. (App. 6, n.1)

The District Court dismissed the Complaint (App. 13) and a timely appeal was taken to the Third Circuit Court of Appeals (App. 2).

The Third Circuit, relying on *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 364 F.3d 102 (3rd Cir.2004) ("***Exxon I***"), held under an expansive interpretation of ***Rooker-Feldman*** that the District Court had no jurisdiction to entertain any claim previously litigated in state court. (App. 6-7) The Third Circuit also ruled that claims relating to the Defendants' wrongful conduct prior to actual demolition of the Stacey residence were not within the subject-matter jurisdiction of the District Court (App. 7). But the Third Circuit did ***not consider*** (1) independent claims of wrongful conduct subsequent to and during the actual destruction of the Staceys' property, i.e., seizures of property without warrants, denial of access to the courts, civil conspiracy, (2) diversity claims for breach of contract, and (3) the fact that Plaintiff Raymond Stacey was ***not a party*** and did not litigate in state court during Mrs. Stacey's injunction proceedings.

The Third Circuit went on to assess the ultimate merits of a RICO claim and dismissed for failure to state a claim. (App. 7-8) The court disposed of other claims brought under the state criminal laws for lack of standing.

The Third Circuit ruled that the state clerk of court and the state court judge were immune from suit (App. 8), though at the pleading stage of the proceedings no evidence as to their conduct had yet come before the District Court.

Petitioners' claims of malpractice against their attorneys were adjudged sufficient to state a claim for relief (App. 8). The Estate claim that City lien procedures deprived Helen Stacey of due process of law was not dismissed (App. 8). Through allusion in a footnote to the *sua sponte* application of Florida law to the federal statute guaranteeing the right of self-representation, the Third Circuit sought to limit Plaintiff Raymond Stacey's federal statutory privileges to proceed ***pro se*** as co-executor of Mrs. Stacey's estate (App. 9). See 28 U.S.C. § 1654.

On December 4, 2004, Petitioner Raymond Stacey, still proceeding ***pro se***, filed a motion for extension of time to file a petition for rehearing. The extension was granted, but he missed the deadline because he received the order one day after the filing was due.

On December 22, 2004, the Court of Appeals issued its certified judgment of November 24, 2004, in lieu of a formal mandate. By letter of December 24 to the court clerk, Petitioner explained his failure to file a petition for rehearing.

On January 11, 2005, the District Court on remand ordered Petitioner to file an amended complaint by February 4, 2005.

On February 4, 2005, Petitioner filed a ***pro se*** motion asking the District Court to suspend proceedings pending the filing of a Petition for Writ of Certiorari.

On February 22, 2005, Petitioner, still ***pro se***, mailed to the U.S. Supreme Court his Petition for Certiorari which the clerk did not docket because it was received out of time and returned to Petitioner.

Meanwhile, on March 10, 2005, Judge Rendell of the Third Circuit granted Petitioner's motion to file a Petition for Rehearing out of time.

The Petition for Rehearing, prepared by counsel, was timely filed on March 30, 2005, pursuant to the Third Circuit order.

On April 11, 2005, Plaintiffs, through counsel, filed in District Court a motion to stay the proceedings pending disposition of the petition for rehearing. A revised complaint, as ordered, was attached to the motion, even though Petitioners objected to amending the Complaint before the Court of Appeals had a chance to act on the rehearing. The

District Court denied the motion for stay anyway. However, the same day, April 15, 2005, the Third Circuit recalled its mandate, effectively staying the lower court from acting by withdrawing jurisdiction.

Plaintiffs' Petition for Rehearing was denied on May 11, 2005, by the Third Circuit Court of Appeals, and the mandate, i.e., the judgment of November 24, 2004, was reissued on May 19, 2005.

On May 31, 2005, Petitioners filed with the Third Circuit a motion for stay pending the filing of a petition for certiorari in the U.S. Supreme Court. Objections to the motion were submitted by the defendant City and the prothonotary. The Third Circuit has yet to dispose of this motion for stay.

REASONS FOR GRANTING THE PETITION

I. The Third Circuit Court of Appeals created a *conflict* with other circuits and also refused to abide by Supreme Court authority when the Third Circuit divested the District Court of jurisdiction in reliance on the Third Circuit's deliberate expansion of the *Rooker-Feldman* doctrine to incorporate preclusion principles

The Third Circuit Court of Appeals in its holding has departed from the accepted course of judicial procedure and has failed to revise or reconsider its judgment carried out in complete reliance on a doctrine the expansion of which was recently rejected by the U.S. Supreme Court. The Circuit Court's apparent refusal to adhere to precedent as now established by the U.S. Supreme Court is a failing which creates an important question of law that will have to be settled by the U.S. Supreme Court.

In affirming the District Court, the Third Circuit relied on ***Exxon I***, which "misperceived" and over extended ***Rooker-Feldman***, and was soundly reversed last March by a unanimous U.S. Supreme Court in ***Exxon Mobil*** (at 1522).

Exxon I, having been reversed, cannot now be relied upon by the Third Circuit to govern the adjudication of Plaintiffs' claims.

The Third Circuit in the instant case erroneously concluded that the District Court lacked jurisdiction under the ***Rooker-Feldman*** doctrine over any claims identical to those on which the state court reached a final judgment (App. 6-7). The appellate court wrongly decided that "[b]ecause these claims were actually litigated in state court, the District Court had no jurisdiction to entertain them," citing ***Exxon I***, at 106. (App. 7)

This line of analysis has been rejected by the U.S. Supreme Court, which held that the jurisdictional ***Rooker-Feldman*** doctrine is ***not*** preclusion-based. The Supreme Court rejected the application of ***Rooker-Feldman*** to bar adjudication of claims in federal court ***simply because identical claims were brought in state court***:

> [N]either *Rooker* nor *Feldman* supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or a related question while the case remains *sub judice* in a federal court.

Exxon Mobil, at 1527.

Furthermore, if a federal plaintiff "present[s] some ***independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party***..., then there is jurisdiction and state law determines

whether the defendant prevails under principles of preclusion." (Emphasis added). ***Exxon Mobil***, at 1527, citing *GASH Associates v. Village of Rosemont, Ill.*, 995 F.2d 726, 728 (7th Cir. 1993).

In this respect, the Third Circuit holding is in conflict with the use of ***Rooker-Feldman*** in the Fourth, Sixth, Seventh and Ninth Circuits. See, e.g., *Washington v. Wilmore*, 407 F.3d 274, 279-280 (4th Cir. 2005); *Stemler v. Florence*, 350 F.3d 578, 589 (6th Cir. 2003); *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 554 (7th Cir. 1999); *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).

Mrs. Stacey's Estate is raising independent claims as to malpractice, diversity breach of contracts, civil conspiracy and deprivation of federal constitutional rights. Since the injuries alleged in the ***pro se*** Complaint are ***distinct*** from the state court judgment, i.e., Plaintiff maintains she suffered injuries ***apart*** from the loss of the injunction in state court, such claims are not "inextricably intertwined" with the state judgment and ***Rooker-Feldman*** does not apply. The Estate is not seeking to overturn the dissolution of the injunction in state court, but is seeking to vindicate federal rights and to seek relief from injuries inflicted by wrongful conduct of the Defendants which is distinct in nature from the loss suffered in state court. See *Noel v. Hall*, 341 F.3d at 1163-1164 (9th Cir. 2003) (cited with approval by ***Exxon Mobil***); *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411 (3d Cir. 2003).

Rooker-Feldman applies only when the injury of which the federal plaintiff complains was caused by the state-court judgment itself, rather than an independent out-of-court or later injury that the state court may not have considered and failed to remedy. Deceased Plaintiff Helen Stacey in her federal suit is complaining of injuries caused by Defendants' wrongful acts that are independent and distinct from any

injury caused by dissolution of the injunction in the state court. See ***Exxon Mobil*** at 1527. Mrs. Stacey in the federal Complaint asserts ***injury from wrongful conduct of the Defendants*** and ***not*** from any injury caused by the state-court judgment itself. Thus, the ***Rooker-Feldman*** doctrine is not a bar to the District Court's jurisdiction over the Estate's federal claims. *Ibid.* Mrs. Stacey complained of property seizures without warrants and obstruction of her right of access to the courts by the court clerk and through the City's destruction of her legal claim before appellate review could be had, in violation of the First, Fourth and Fourteenth Amendments. See *Soldal v. Cook County Illinois*, 506 U.S. 56, 63 (1992); *Lewis v. Casey*, 518 U.S. 343 (1996).

As emphasized in ***Exxon Mobil*** by Justice Ginsburg for the unanimous Supreme Court:

> The *Rooker-Feldman* doctrine...is confined to cases of the kind from which the doctrine acquired its name: cases brought by ***state-court losers complaining of injuries caused by state-court judgments*** rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. (Emphasis supplied.)

Exxon Mobil, 125 S.Ct. at 1521-22. Plaintiff Raymond Stacey was ***not a party*** to the state action, so he is ***not*** a "state-court loser," and Mrs. Stacey was not complaining of injuries caused by the state-court judgment, but of ***independent injuries*** caused through federal constitutional violations, e.g., seizures without warrants and obstruction of her access to the courts. Except for *Rooker* and *Feldman*, this Court has never used the doctrine to dismiss an action for lack of jurisdiction. ***Id.***, at 1523.

Rooker-Feldman applies when "the injury of which [the federal plaintiff] complains was caused by the [state court]

judgment" itself rather than an "independent ...injury out of court" that the state court failed to remedy. *GASH*, 995 F.2d. at 729.

Justice Ginsburg also held that the ***Rooker-Feldman*** doctrine is ***distinct from the affirmative defense of preclusion***. ***Exxon Mobil***, at 1527. Res judicata is an affirmative defense and must be pleaded affirmatively. See *Iacaponi v. New Amsterdam Casualty Co.*, 379 F.2d 311 (3rd Cir. 1967). The U.S. Supreme Court stresses in ***Exxon Mobil*** that preclusion in federal litigation following a judgment in state court depends on the application of the Full Faith and Credit Act, 28 U.S.C. § 1738. ***Exxon Mobil***, at 1527.

The ***Rooker-Feldman*** doctrine should not be confused with the concept of res judicata. Concurrent jurisdiction permits overlapping and even identical claims to proceed in parallel in state and federal courts as long as the claims asserted in the federal action do not seek to overturn the determination reached in the state court action.

A federal district court has subject-matter jurisdiction to entertain the claims and may dismiss them only if the defendant has asserted the affirmative defense of preclusion, i.e., estoppel or res judicata, ***and then only in full conformance with the preclusion law of the relevant state under the Full Faith and Credit Act, 28 U.S.C. § 1738.***

The defense of res judicata is an affirmative defense that was never raised by any of the Defendants in their motions to dismiss in the District Court. See Fed. Rule Civ. Proc. 8(c). Furthermore, under res judicata, the court ***must*** determine whether the party against whom the defense is raised had a full and fair opportunity to pursue its claims in the previous state proceeding. The District Court never engaged in such an inquiry.

The District Court had subject-matter jurisdiction to entertain Plaintiff Raymond Stacey's claims, as well as the claims of the deceased Plaintiff Helen Stacey, and could dismiss them only if the Defendants successfully asserted the affirmative defense of preclusion in conformance with the state's preclusion law under the Full Faith and Credit Act, 28 U.S.C. § 1738. ***Exxon Mobil***, at 1527. No such defense has been raised apparently because the Defendants, like the Third Circuit panel, "misperceived the narrow ground occupied by *Rooker-Feldman*," ***which is jurisdictional and not identical to preclusion doctrines that are not jurisdictional***. ***Id.***, at 1522, 1527. The only preclusion analysis argued by Defendants was raised ***through application*** of the ***Rooker-Feldman*** doctrine to dismiss Plaintiffs' claims.

The doctrine of res judicata, however, does ***not*** foreclose adjudication of constitutional questions within the district court's jurisdiction. If res judicata as an affirmative defense has been waived, or if no full and fair opportunity to litigate was afforded to Plaintiffs in state court,

> "[t]he Supreme Court has been careful to ensure that a judgment entered without due process is not entitled to full faith and credit in any court, state or federal."

18 Wright, Miller & Cooper, *Federal Practice & Procedure* § 4469, "Res Judicata," at 633. See also *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481-482 (1982); *Centifanti v. Nix*, 865 F.2d 1422 (3rd Cir. 1989).

As stated by the *Exxon Mobil* petitioners in discussing preclusion doctrine, ***Rooker-Feldman*** does not replace "that waivable affirmative defense with a nonwaivable jurisdictional bar that trumps federal jurisdiction that otherwise exists and that a federal court may invoke *sua sponte*." *Petition for Writ of Certiorari* to *Exxon Mobil Corp.*

v. Saudi Basic Industries Corp., 2004 WL 1427564 (U.S. Jun. 22, 2004) (NO. 03-1696), at 7-8.

II. The Third Circuit reversibly erred when it sought to apply the *Rooker-Feldman* doctrine to divest the District Court of jurisdiction over the claims of a *pro se* litigant who was *not a party* to the state court proceedings, and raised in a federal forum *independent claims* of wrongful conduct.

As pointed out in his recent Petition for Rehearing, Plaintiff Raymond Stacey was ***not a party*** to his mother's state court action (see also caption of the state court opinion, ***Helen*** *Stacey v. City of Hermitage* (emphasis added), *supra*). Mrs. Stacey's claims, now in her estate, as raised in the District Court seek to vindicate ***independent federal rights*** violated by wrongful acts of the Defendants, such as warrentless seizure of property and refusal of a state-court clerk to process her appeal, all of which can be considered without overturning the state-court dissolution of the injunction (see discussion in Part I above at 13-16), together with claims of civil conspiracy and diversity breach of contracts.

As a ***nonparty*** to the state proceeding, Plaintiff Raymond Stacey should be free and unfettered by ***Rooker-Feldman*** to litigate his federal claims in District Court, as reaffirmed by the Supreme Court in ***Exxon Mobil*** to the effect that "the doctrine has no application to a federal suit brought by a nonparty to the state suit." ***Id.***, at 1523, citing *Johnson v. De Grandy*, 512 U.S. 997, 1005-1006 (1994). In this respect, the Third Circuit decision barring a nonparty is in conflict with the use of ***Rooker-Feldman*** in the Sixth, Seventh and Ninth Circuits. See, e.g., *U.S. v. Owens*, 54 F.3d 271, 274 (6th Cir. 1995); *Leaf v. Supreme Court of Wisconsin*, 979 F.2d 589, 598 (7th Cir. 1992); *Bennett v. Yoshina*, 140 F.3d 1218, 1224

(9th Cir. 1998). Also, the Third Circuit panel in barring a nonparty failed to follow precedent on its own circuit. See *National R.R. Passenger Corp. v. Pennsylvania Public Utility Com'n*, 342 F.3d 242, 256-257 (3rd Cir. 2003); *Marks v. Stinson*, 19 F.3d 873, 885 n.11 (3rd Cir.1994); *Valenti v. Mitchell*, 962 F.2d 288, 297 (3rd Cir. 1992).

III. *Pro se* Plaintiffs are not required to anticipate the state actors' defense of sovereign immunity in their Complaint, nor did the District Court or the Third Circuit have any right to evaluate the worth of the state actors' anticipated defense in assessing the sufficiency of plaintiffs' claims at the pleading stage of these proceedings.

In assessing the sufficiency of threshold pleading, the court cannot burden the ***pro se*** plaintiffs with the job of anticipating an affirmative defense. To do so is to impose a heightened pleading standard on the plaintiffs. This is a practice strictly forbidden by U.S. Supreme Court authority on this subject. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002); *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998); *Kulick v. Pocono Downs Racing Ass'n, Inc.*, 816 F.2d 895 (3rd Cir. 1987). These decisions have been accorded finality, and such precedent cannot be ignored by the Third Circuit.

The federal rules governing pleading do not require the plaintiff to anticipate an immunity defense; nor do the rules require any heightened specificity in pleading. See *Gomez v. Toledo*, 446 U.S. 635 (1980); *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993).

At the pleading stage, general factual allegations of injury resulting from defendants' conduct are sufficient, because on

a motion to dismiss the Court must presume that general allegations embrace those specific facts that are necessary to support the plaintiffs' claims. See *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

The Third Circuit panel relied on *Lockhart v. Hoenstine*, 411 F.2d 455 (3rd Cir. 1969) in asserting in one sentence that the state court prothonotary was immune from liability. However, as stressed in *Rivkin v. County of Montgomery*, 838 F.Supp. 1009 (E.D.Pa. 1993), the clerk may not have absolute immunity from suit if her action was not taken pursuant to court order. The rule that clerks enjoy absolute immunity for acts done in performance of their ***discretionary*** duties ***does not extend to*** conduct relating to ***ministerial*** functions. Ministerial conduct enjoys only qualified immunity ***triggered by a showing*** that the clerk acted in good faith, pursuant to lawful authority vested in her by the state. See *Allen v. Dorsey*, 463 F.Supp. 44 (E.D.Pa. 1978).

In the instant case, the Third Circuit erred when it sought to provide blanket immunity for the clerk at the pleading stage of the ***pro se*** Plaintiffs' suit, without adjudication of proof. The Court of Appeals is not the finder of fact; it could not and did not review any evidence as to the actual conduct of the clerk or her explanation for her conduct. The appellate court is not free to say that the District Court's scrutiny of the Complaint makes it plain that under no circumstances could factual evidence exist to establish that the clerk did not act in good faith and/or abused the authority vested in her by statute. A genuine issue of material fact does exist as to whether the clerk acted pursuant to court order, erroneous direction from a judge, or on her own initiative.

The appellate court acted prematurely and erroneously in affirming the District Court's dismissal of plaintiffs' ***pro se*** Complaint against the clerk on grounds of the clerk's

absolute immunity, thus precluding any opportunity for the plaintiffs by subsequent proof to establish their claims against the clerk:

> When a federal court reviews the sufficiency of a complaint, before the reception of any evidence...its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.

Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

Plaintiffs' ***pro se*** Complaint alleges that the clerk acted either outside the scope of her office, or, if within the scope, acted in an arbitrary manner. As stressed in *Scheuer*, plaintiffs are alleging facts which demonstrate that they are seeking to impose liability on the named defendants "for what they claim--but have not yet established by proof--was a deprivation of federal rights by these defendants under color of state law":

> Whatever the plaintiffs may or may not be able to establish as to the merits of their allegations, their claims, as stated in the complaints, given the favorable reading required by the Federal Rules of Civil Procedure, are not barred by the Eleventh Amendment.

Scheuer, at 238.

The Court of Appeals has erroneously and prematurely determined that the clerk enjoys absolute immunity from suit. However,

> If the immunity is qualified, not absolute, the scope of that immunity will necessarily be related to facts as yet not established either by affidavits, admissions, or a trial record.... It can hardly be argued, at this late date, that

> under no circumstances can the officers of state government be subject to liability....

Scheuer, at 242-43.

In Pennsylvania, exclusive jurisdiction over appeals is vested in the appellate courts. See 42 Pa.C.S.A. § 762 ("Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas"). Under *Stump v. Sparkman*, 435 U.S. 349 (1978), a judge can lose immunity for actions taken in complete absence of all jurisdiction. See *Mireles v. Waco*, 502 U.S. 9 (1991); accord *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760 (3rd Cir. 2000). In *Stump*, this Court gave the example of a probate judge trying a criminal case: "[H]e would be acting in the clear absence of jurisdiction and would not be immune from liability." *Id.* at 357 n.7. A common pleas judge with no statutory authority cannot assume appellate jurisdiction to effectuate dismissal of an appeal or order the court clerk to refuse to process the notice of appeal. See *Mireles*, at 12-13; *Maestri v. Jutkofsky*, 860 F.2d 50, 52-53 (2nd Cir. 1988).

A judge also loses immunity for ***nonjudicial acts***—acts that are not normal functions of the judge and outside the expectations of the parties. *Mireles*, at 12. It is not a normal function of Pennsylvania common pleas judges to usurp appellate jurisdiction, and to counsel or to order court clerks to refuse to process appeals. The expectation of Plaintiff Helen Stacey in filing her "first" notice of appeal was that she would be dealing with the appellate courts, not the trial judge, under appellate rules of procedure. See *Mireles*, at 12 (the test of "expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity"), quoting *Stump*, 435 U.S. at 362; accord *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d at768+. See also Pa.R.A.P. Rule 311(a)(4)(ii) (immediate appeal from decree nisi dissolving injunction), Rule 902 (appeal as of right), Rule 905 (notice of

appeal filed with court clerk); 42 Pa.C.S.A. § 762 (exclusive jurisdiction of appeals in appellate court).

The District Court erred in prematurely dismissing the ***pro se*** Complaint without receiving evidence of plaintiffs' claim against the state court clerk and judge, and the Court of Appeals erred in affirming that decision. Furthermore, the party asserting Eleventh Amendment immunity (and standing to benefit from its acceptance) bears the burden of proving its applicability. It is an affirmative defense that must be proved by the party asserting it. *Christy v. Pennsylvania Turnpike Com'n*, 54 F.3d 1140, 1144 (3rd Cir. 1995); *Chisolm v. McManimon*, 275 F.3d 315 (3rd Cir. 2001). Because the issue of Eleventh Amendment immunity sufficiently partakes of the nature of a jurisdictional bar, it is an issue that may be raised at any time during the pendency of the case. See *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 131 F.3d 353 (3rd Cir. 1997), cert. granted, 525 U.S. 1063, affirmed, 527 U.S. 666 (1999).

Given the rules of notice pleading, plaintiffs had no obligation in their ***pro se*** Complaint to anticipate affirmative defenses. Plaintiffs withstand dismissal by simply resting on the assumed truthfulness and liberal construction afforded their ***pro se*** Complaint under the rules of notice pleading. See *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1 (1983); *Milhouse v. Carlson*, 652 F.2d 371, 373 (3rd Cir. 1981). A federal court determines whether a case is one arising under federal law based on what necessarily appears in the plaintiff's statement of his own claims in the complaint, unaided by anything alleged in anticipation or avoidance of defenses. The Plaintiffs here were not required to prove at this stage of the proceedings that either the judge or the clerk was not entitled to immunity. ***An immunity defense must be proved by the parties who are***

asserting it. See *Blatchford v. Native Village of Noatak and Circle Village*, 501 U.S. 775 (1991). The District Court had no power to reach the merits or assess the sufficiency of evidence ***prior to trial***, by virtue of its consideration of a motion to dismiss.

IV. The Third Circuit erred in affirming the District Court's summary disposition of all claims made in Plaintiffs' Complaint (even though the appellate court salvaged three of the claims and gave Plaintiff a chance to amend the Complaint) because the District Court's jurisdictional rationale for dismissing could not be reconciled with its disposition on the merits

The District Court, given the summary limitations of its Memorandum Order of dismissal of September 22, 2003 (App. 12), made it impossible for the Court of Appeals to know what it was affirming. The District Court in granting all the motions to dismiss the Complaint "for all of the reasons stated therein" (App. 13), was simultaneously dismissing on conflicting grounds that it ***lacked subject-matter jurisdiction*** over the Plaintiffs' cause of action ***and*** dismissing on grounds that it had the power to proceed to ***assess the ultimate merits*** of Plaintiffs' claims. If a federal court lacks subject-matter jurisdiction, it may not reach the merits of a case. *Christianson v. Colt Indus. Op. Corp.*, 486 U.S. 800, 818 (1988).

Dismissal for lack of jurisdiction over the subject matter cannot be reconciled with a dismissal (apparently with prejudice, but not so stated) grounded on the court's assessment of the ultimate merits of Plaintiffs' claims. The District Court assessed questions of fact on their merits while at the same time wrongfully asserting that it lacked subject-matter jurisdiction:

> "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 7 Wall. 506, 514, 19 L.Ed. 264 (1868).

Steel Co. 523 U.S. at 94. *Steel Company* stands for the proposition that a court cannot resolve contested questions of law if it believes its jurisdiction is in doubt. However, this is exactly what the District Court did, i.e., resolved questions of law and fact while dismissing for lack of subject-matter jurisdiction.

The Court of Appeals had to *sua sponte* construct a rationale for the District Court's actions, because it was never supplied with an explanation, coherent or otherwise, by the District Court. (App. 13) The Court of Appeals should not have affirmed the District Court when the rationale for dismissal was both concealed and in conflict with controlling precedent. Finally, neither the appellate nor the district court ever considered the fact that the Plaintiffs were raising claims of ***civil conspiracy, diversity breach of contract, and seizures of property without warrants*** and a claim that the actual demolition of the Stacey home by the City was ***retaliatory obstruction of access to the courts.*** All these claims were alleged in their ***pro se*** Complaint, which should have been "liberally construed" as "true" in favor of the ***pro se*** Plaintiffs. See *Estelle v. Gamble*, 429 U.S. 97, 99, 106 (1976). No Defendant ever responded in any fashion whatsoever to the raising of such claims. Nor did the district or appellate court make any statement as to why such claims should be dismissed.

V. The Third Circuit erred when it suggested *sua sponte*, in the absence of Third Circuit authority on the subject, that the Plaintiff had lost his federal rights to self-representation based on the court's interpretation of foreign state-law authority.

The Third Circuit *sua sponte* mentions in passing (in a footnote) that it is relying on *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997) for the novel proposition that Plaintiff cannot proceed ***pro se*** when representing his mother's estate as executor. However, the court in *Pridgen* admitted that the only other circuit court to address this issue considered it in banc and was equally divided. The Eleventh Circuit panel in fact reversed its district court when the lower court attempted to stop an executor from proceeding, ***pro se,*** on the estate's behalf. *Reshard v. Britt*, 819 F.2d 1573 (11th Cir. 1987), *panel opinion vacated and rehearing granted*, 831 F.2d 222, *district court affirmed by divided court on rehearing in banc*, 839 F.2d 1499 (11th Cir.(Fla.) 1988).

The Second Circuit in *Pridgen* announced that its ruling was made in reliance on the dissent to the panel opinion. A dissent relied on by the Second Circuit does not supply controlling authority on the Third Circuit. Furthermore, the Second Circuit stated that it was ***not*** deciding the issue categorically because the issue was resolved by an admission that there were legitimate creditors of the estate. No such admission has been made by Plaintiff in the instant case. The Third Circuit also ignored the ruling made in *Jaco v. Bloechle*, 739 F.2d 239 (6th Cir 1984), in which it was held that a Section 1983 action could most definitely be brought by the executor of an estate.

In *Pridgen*, the Second Circuit's limited holding was made in respect to the estate of a deceased ***defendant*** whose executrix could not appear ***pro se*** where the estate had

legitimate creditors whose interests were implicated. This decision was also grounded in Florida probate law.

No objection to the ***pro se*** Plaintiff's standing to proceed as the representative of his mother's estate was ever raised by any Defendant prior to the Third Circuit's *sua sponte* suggestion while reviewing the District Court's order of dismissal. But in the Florida case, such objections were actually raised, based on Florida probate law. It was error for the Third Circuit to substitute state law in Florida for state law in Pennsylvania in a federal court case with respect to a ***pro se*** action proceeding under 42 U.S.C. § 1983 and 28 U.S.C. § 1654, and it was wrong for the Third Circuit to rely on a dissent written indirectly on another circuit to supply it with precedent in the instant case.

The right to self-representation is an important and fundamental entitlement in our system. For an appellate court to eliminate the right through a casual, footnoted, non-precedential allusion to unreliable authority on some other circuit is disingenuous and improper (with a hint of punishment for the ***pro se*** plaintiff). A ***pro se*** litigant's right to self-representation is not derived from either Florida or Pennsylvania's probate laws; it is statutory under 28 U.S.C. § 1654 and cannot be eliminated in such a summary fashion without discussion or analysis of Pennsylvania probate law. The right of a party to bring an action in federal court under 28 U.S.C. § 1654 is a basic right and is a right which is accorded the highest degree of protection. See *Faretta v. California*, 422 U.S. 806 (1975)

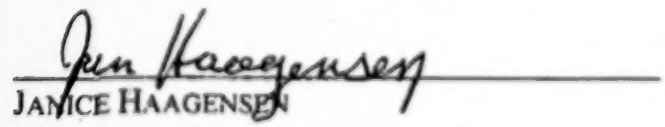
CONCLUSION

This case is important not only to Petitioners, but to the thousands of families across the United States whose residential homes and buildings have been, or will be, demolished by local governments over the years. For example, in the five year period between 1990 and 1995, in the City of Dallas, Texas, alone, 2,180 structures were demolished by the city, of which 1,902 were residential. See *Petition for a Writ of Certiorari*, Charles Freeman and Rosalyn Brown, Petitioners, v. The City of Dallas, Texas, Respondent, (U.S. May. 23, 2001) (No. 00-1755), 2001 WL 34125096 at 12.

Only this Court's guidance and supervisory powers to correct injustice, as was done in *Blaisdell* and *Holloway*, can help put a stop to local governments riding roughshod over homeowners' rights in the property they cherish. See *Blaisdell v. City of Rochester, N.H.*, 125 S.Ct. 1723 (U.S. Apr 04, 2005, to 1st Cir.) and *Holloway v. Arkansas State Bd. of Architects*, 125 S.Ct. 1725 (U.S. Apr 04, 2005, to 8th Cir.), both of which were vacated and remanded for further consideration in light of ***Exxon Mobil***.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



JANICE HAAGENSEN

Attorney for Petitioners
349 NEW ROAD
ENON VALLEY, PA 16120
TEL 724 336-5962

Date: August 8, 2005

APPENDIX

UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 03-4176

RAYMOND STACEY, Individually
and as Co-Executor of the Last Will of Helen Stacey,
Appellant

v.

CITY OF HERMITAGE; GARY P. HINKSON, Individually and in Official Capacity as City Manager of Hermitage; EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage; RUSSELL V. PENN, JR., Individually and in Official Capacity as City Inspector of Hermitage; JEFFREY OSBORNE, Individually and in Official Capacity as Asst. City Inspector of Hermitage; ROBERT S. GOELTZ, Individually and in Official Capacity as Fire Marshall of Hermitage; JAMES PAT WHITE, Individually and in Official Capacity as Commissioner of Hermitage; THOMAS W. KUSTER; H. WILLIAM WHITE, III; EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually and in Official Capacity as Solicitors for Hermitage; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; PENN POWER CO.; OHIO EDISON CO., thru its Employees and Agents; RICHARD SEREDAY; ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; VIROSTICK TRANSFER, thru its Owners, Employees and Agents; *WODZIANSKI & SMITH, thru its Owners, Employees and Agents; RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents; THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County; ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents

*(Amended per the Clerk's Order of 12/30/03)

On Appeal From the United States District Court
For the Western District of Pennsylvania
(WD/PA Civil No. No. 02-cv-01911)
District Judge: Honorable Robert J. Cindrich

---

*2 Submitted Under Third Circuit LAR 34.1(a)
November 12, 2004

Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

(Filed: November 24, 2004)

OPINION OF THE COURT

PER CURIAM

Appellant Raymond Stacey, proceeding pro se, appeals an order of the United States District Court for the Western District of Pennsylvania dismissing the civil rights action filed by him and his mother, Helen Stacey, who is now deceased, after the City of Hermitage demolished Helen Stacey's home. For the reasons that follow, we will affirm in part and vacate in part the order of the District Court.

Helen Stacey unsuccessfully tried to enjoin the demolition of her home in Pennsylvania state court. In Stacey v. City of Hermitage Bd. of Appeals, 789 A.2d 772 (Pa. Commw. 2001), allocatur denied, 806 A.2d 865 (Pa. 2002), cert. denied, 538 U.S. 977 (2003), the Pennsylvania Commonwealth Court set forth the following background.

In 1997, the City of Hermitage informed Helen Stacey that her property violated the City's property maintenance code, and that the City was proceeding to have it declared a public nuisance. In 1998, the City adopted a new property maintenance code, notified Helen Stacey that her property violated the new code and required her to remedy the violations within thirty days. Helen Stacey appealed to the City of Hermitage Board *3 of Appeals which after a hearing in April 1999, determined that the property was an attractive nuisance, unsafe for human habitation, littered with garbage and uncontrolled weeds, a fire hazard and in danger of

collapse. Helen Stacey appealed, and in April 2000 the trial court affirmed the Board's determination with the exception of its finding that the property was a fire hazard. Helen Stacey did not further appeal.

The City began proceedings to have the structure demolished. In June 2000, the City notified Helen Stacey that she had thirty days to cure the problems, and that if she failed to do so, the property would be demolished. Raymond Stacey, who had put two loads of sand in the basement to remedy the property, sought an extension of time to complete the repairs. The City denied an extension of time.

In August 2000, Helen Stacey, who had executed a power of attorney naming Raymond as her legal representative, sought a temporary injunction against the Board and the City. She alleged that she was denied a hearing on the issue of demolition, that she was not notified of her right to appeal the demolition decision, and that the structure could be restored. The trial court granted a temporary injunction and held a permanent injunction hearing. The court concluded that it was bound by its earlier order declaring the structure unsafe, that it would be unreasonable to repair the structure, and that Stacey was not entitled to a hearing before the Board because she did not file a timely appeal of the notice of demolition. The trial court vacated the temporary injunction, and after Stacey filed exceptions, on November 6, 2000, entered an order affirming its prior decree.*4 On November 7, 2000, the City demolished the structure.

On appeal, the Pennsylvania Commonwealth Court concluded that Stacey could not argue that her property was not a nuisance, and that the only issue at the injunction hearing was whether demolition of the structure was the appropriate remedy. In response to Stacey' s argument that the City denied her a hearing on the issue of demolition, the Commonwealth Court also found that Stacey did not appeal the City's notice of demolition. Rather, she asked for an extension of time to make repairs. The Commonwealth Court

also rejected Stacey's argument that the City denied her an opportunity to make repairs or sell the property because Stacey was on notice as early as 1997 that her property was in violation of the City's code. Although Raymond Stacey testified at the injunction hearing that there were buyers interested in the property, the Commonwealth Court held that he did not show that he was complying with requirements for transferring property that violated the code. The Commonwealth Court also found no merit to Helen Stacey's contention that she had no opportunity to remove her personal items because Raymond testified that he was given an opportunity to do so. Although the Commonwealth Court did not condone the City's haste in razing the property, it concluded that Stacey was afforded due process because she received notice that the demolition would occur if repairs were not made. Finally, the Commonwealth Court held that demolition of the property was the appropriate remedy.

On November 6, 2002, two years after the demolition, Helen and Raymond Stacey *5 filed the present action in District Court against the City of Hermitage and various City employees, attorneys who represented the City and the Staceys throughout the state court proceedings, a utility company, demolition company and moving company involved in the demolition, an inspector and appraiser hired by the City, Pennsylvania Court of Common Pleas Judge Thomas Dobson, who presided over the state court action, and the Court of Common Pleas prothonotary.

In their complaint, the Staceys allege that the property was not a hazard, that there were alternatives to demolition and that the demolition occurred without providing them due process. The Staceys further allege that City attorney William White denied them the opportunity to be heard on the demolition and the procedure for the inventory of items to be taken or salvaged, and that their attorney Christopher Ferry and his firm failed to seek an injunction to prevent the demolition. The Staceys also state that in August 2000, the City Police Chief, City attorney White, Commissioner James

White, the City Inspectors, workmen from the utility Penn Power Co. and moving company Virostick Transfer Company, broke into the property, and searched and seized personal property without consent, a warrant or court order. They allege that the Police Chief dragged Raymond off of the property.

The Staceys further allege that their subsequent attorney, Jerry Cartwright, failed to get a continuance of the hearing on the permanent injunction, and they did not have the opportunity to present testimony of contractors and engineers, and that he failed to attend *6 the final hearing and perfect their notice of appeal. They also allege that in October or November 2000, the City defendants, and their inspectors and appraisers, searched the property without consent, warrant or court order. The Staceys further aver that the prothonotary did not process their notice of appeal of the denial of injunctive relief, and that Judge Dobson was biased against them and had ex parte discussions with the City's attorney. Finally, they allege that the City filed a lien against the property for the demolition charges without affording them procedural due process.

Based upon these allegations, the Staceys claim violations of their constitutional rights to procedural and substantive due process, their right to be free from unreasonable searches, and their right to privacy, as well as conspiracy and violations of the Racketeer Influence & Corrupt Organizations Statute, 18 U.S.C. §§ 1961 et seq. ("RICO"), the Pennsylvania Corrupt Actions Act, 18 Pa. Cons. Stat. § 911, and 18 Pa. Cons. Stat. § 4910, which relates to tampering with physical evidence.

Each defendant moved to dismiss the complaint on various grounds, including that the District Court lacked jurisdiction under the Rooker-Feldman doctrine, that there was no state action by the private defendants, and that the Staceys failed to state a claim under RICO and the Pennsylvania statutes. The District Court granted the motions

to dismiss "for all of the reasons stated [in the defendants' motions]." Dist. Ct. Order at 2. This *7 appeal followed.[1]

We have jurisdiction pursuant to 28 U.S.C. § 1291. To the extent the District Court concluded that it lacked jurisdiction under the Rooker-Feldman doctrine, our standard of review is plenary. Marran v. Marran, 376 F.3d 143, 149 (3d Cir. 2004). Our standard of review is also plenary for those claims that the District Court dismissed for failure to state a claim. Oatway v. American Int'l Group, Inc., 325 F.3d 184, 187 (3d Cir. 2003). In his brief, Raymond Stacey contends that the District Court did not specify its reasons for dismissal, and failed to show that no relief could be granted under any set of facts. He argues that the District Court failed to liberally construe his pro se complaint, and did not afford him the opportunity to amend it.

Because all of the defendants moved to dismiss the complaint based upon the Rooker-Feldman doctrine, we address this basis for dismissal first. The Rooker-Feldman doctrine precludes lower federal courts from reviewing decisions of a state tribunal. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 364 F.3d 102, 104 (3d Cir. 2004). *cert. granted o* [sic] *other grounds*, 2004 WL 1760036. Because Congress has conferred jurisdiction to review a state court's decision only on the Supreme Court, lower federal courts lack the power to decide claims in which the relief requested requires determining that the state court's decision is wrong. Id. A claim is barred by Rooker-Feldman in two *8 circumstances: first, if the claim was actually litigated in state court prior to the filing of the federal action or, second, if the claim is inextricably intertwined with the state adjudication. Id.

---

[1] While the District Court proceedings were pending, Helen Stacey passed away and the District Court substituted Raymond Stacey, as co-executor of Helen Stacey's will, in the place of Helen Stacey as plaintiff.

Several of the Staceys' claims are identical to the claims upon which the Commonwealth Court of Pennsylvania reached a final judgment. The Commonwealth Court adjudicated the claims that the property was not a hazard, that there were alternatives to demolition, that the demolition occurred without due process, and that they were denied the opportunity to retrieve their personal property. Because these claims were actually litigated in state court, the District Court had no jurisdiction to entertain them. See id. at 106.

Some of the Staceys' other claims are inextricably intertwined with the state adjudication. A federal action is inextricably intertwined "where federal relief can only be predicated upon a conviction that the state court was wrong." Parkview Assoc. P'ship v. City of Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) (citations omitted). Applying this definition, the Staceys' claim that in August 2000 the City Police Chief, City attorney White, Commissioner James White, the City Inspectors, workmen from the utility Penn Power Co. and moving company Virostick Transfer Company, broke into the property, and searched and seized personal property without consent, a warrant or court order - and claim that in October or November 2000, the City defendants, and their inspectors and appraisers, searched the property without consent, warrant or court order - are inextricably *9 intertwined with the Commonwealth Court's decision. The alleged acts were incident to the demolition, and relief on these claims can only be predicated upon a conviction that the state court wrongly decided that the City could demolish the property.

Some of the Staceys' claims were not actually litigated in state court, and are not inextricably intertwined with the Commonwealth Court's decision, but were properly dismissed on other grounds. The Staceys do not state a claim upon which relief can be granted under RICO. See Beck v. Prupis, 529 U.S. 494, 505 (2000) (holding that a conspiracy claim under RICO must involve an act of racketeering or an act that is otherwise unlawful under the statute). In addition,

---

Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED and ADJUDGED by this Court that the order of the District Court entered on September 22, 2003 be, and the same is, hereby affirmed in part and vacated and remanded in part. Each party shall bear its own costs. All of the above in accordance with the opinion of this Court.

ATTEST

/s/ Marcia M. Waldron
Clerk

Dated: November 24, 2004

Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED and ADJUDGED by this Court that the order of the District Court entered on September 22, 2003 be, and the same is, hereby affirmed in part and vacated and remanded in part. Each party shall bear its own costs. All of the above in accordance with the opinion of this Court.

ATTEST

/s/ Marcia M. Waldron
Clerk

Dated: November 24, 2004

Certified as a true copy and issued in lieu of a formal mandate on 05/19/05

s/ Marcia M. Waldron
Teste:
Clerk, U.S. Court of Appeals for the Third Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAYMOND STACEY and RAYMOND STACEY as Co-Executor of the Last Will of Helen Stacey,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 02-1911
CITY OF HERMITAGE, et al.,	)	
Defendants.	)	

MEMORANDUM ORDER

This action arises from the demolition of property owned by Helen Stacey by the City of Hermitage for certain violations of the City's property maintenance code. The procedural and factual background underlying the case is extensive and has been thoroughly summarized by the Pennsylvania Commonwealth Court in Stacey v. City of Hermitage, 789 A.2d 772 (Pa. Commw. Ct. 2001). In sum, Helen Stacey vigorously contested the demolition of her property in state court which ultimately ended with the denial of her petition for appeal to the Pennsylvania Supreme Court. See Stacey v. City of Hermitage, 806 A.2d 865 (Pa. 2002). Helen Stacey and her son Raymond Stacey subsequently filed the instant action against twenty-two defendants including, the City, the City Manager, the City Chief of Police, the City Inspector, the Assistant City Inspector, the City Fire Marshall, the City Commissioner, the City Solicitor, the Court of Common Pleas Judge who presided over the state case, the prothonotary of the Court of Common Pleas for

Mercer County, Helen Stacey's counsel during the state court proceedings, two electric utility companies, and a demolition company. Plaintiffs allege federal constitutional claims under the Fourth, Fifth, Ninth, and Fourteenth Amendments pursuant to 42 U.S.C. Section 1983 of the Civil Rights Act, a conspiracy claim under the Racketeer Influence and Corrupt Organizations Statute ("RICO"), 18 U.S.C. Section 1961 et seq., and violations of various Pennsylvania criminal laws (18 Pa. Cons. Stat. Section 911, Pennsylvania Corrupt Actions Act, and Section 4911, which covers the tampering with or fabricating of physical evidence) . Each defendant, individually or jointly with one or more co-defendants, has filed a motion to dismiss which is currently pending.

After having reviewed the various motions to dismiss and supporting briefs we find that each motion should be granted for all of the reasons stated therein. Accordingly, IT IS HEREBY ORDERED that defendants' motions to dismiss (Doc. Nos. 3, 13, 15, 16, 21, 23, 25, 28, 50, 52, and 56) are all GRANTED.

The Clerk is directed to mark this case closed.

SO ORDERED this 22 day of September, 2003.

s/ Robert J. Cindrich
ROBERT J. CINDRICH
United States District Judge

cc: All counsel of record.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-4176

RAYMOND STACEY, Individually and as Co-Executor of the Last Will of Helen [St]acey,

Appellant

v.

CITY OF HERMITAGE; GARY P. HINKSON, Individually and in Official Capacity as City Manager of Hermitage; EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage; RUSSELL V. PENN, JR., Individually and in Official Capacity as City Inspector of Hermitage; JEFFREY OSBORNE, Individually and in Official Capacity as Asst. City Inspector of Hermitage; ROBERT S. GOELTZ, Individually and in Official Capacity as Fire Marshall of Hermitage; JAMES PAT WHITE; Individually and in Official Capacity as Commissioner of Hermitage; THOMAS W. KUSTER; H. WILLIAM WHITE, III; EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually and in Official Capacity as Solicitors for Hermitage; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; PENN POWER CO.; OHIO EDISON CO., thru its Employees and Agents; RICHARD SEREDAY; ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; VIROSTICK TRANSFER, thru its Owners, Employees and Agents; *WODZIANSKI & SMITH, thru its Owners, Employees and Agents; RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents; THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County; ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents

*(Amended per the Clerk's Order of 12/30/03)

On Appeal From the United States District Court
For the Western District of Pennsylvania
(D.C. Civil No. 02-cv-01911)
District Judge: Honorable Robert J. Cindrich

Present: SCIRICA, Chief Judge, SLOVITER, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, and VAN ANTWERPEN, Circuit Judges.

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING IN BANC

The petition for rehearing filed by Appellant having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.

BY THE COURT:

/s/ Marjorie O. Rendell

Circuit Judge

Dated: May 11, 2005
ARL/cc: Mr. Raymond Stacey; All Counsel of Record

(1)

FILED
SEP 7 - 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 05-199

IN THE
Supreme Court of the United States

RAYMOND STACEY, INDIVIDUALLY
AND AS CO-EXECUTOR OF THE LAST
WILL OF HELEN STACEY,
Petitioners,

v.

CITY OF HERMITAGE, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DENNIS ST. J. MULVIHILL
ROBB LEONARD MULVIHILL
2300 One Mellon Center
Pittsburgh, PA 15219
(412) 281-5431
Attorneys for Respondents Richard Sereday and Roseann Sereday, d/b/a Sereday Excavating

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals properly apply the *Rooker-Feldman* doctrine to claims made by Petitioner Helen Stacey, now deceased?

2. Did the Court of Appeals properly apply the *Rooker-Feldman* doctrine to Petitioner Raymond Stacey's claims?

3. Did the Court of Appeals err in its disposition of Petitioners' claims?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE PETITION 8

I. The Court of Appeals' Application of the *Rooker-Feldman* Doctrine to Helen Stacey's Claims Did Not Conflict with *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, ___ U.S. ____, 125 S.Ct. 1517 (2005). 8

II. The Court of Appeals Properly Applied the *Rooker-Feldman* Doctrine to Raymond Stacey's Claims. 14

III. The Court of Appeals Properly Disposed of the Staceys' Claims. 16

CONCLUSION 17

TABLE OF AUTHORITIES

Cases

Ammon v. McCloskey,
655 A.2d 549 (Pa.Super. 1995) 15

Brown v. Damiani,
154 F.Supp.2d 317 (D. Conn. 2001) 14

Desi's Pizza v. Wilkes-Barre,
321 F.3d 411 (3d Cir. 2003) 12

District of Columbia Court of Appeals v. Feldman,
460 U.S. 462, 103 S.Ct. 1303,
75 L.Ed.2d 206 (1983) 8

E.B. v. Verniero,
119 F.3d 1077 (3d Cir. 1997) 11

Exxon Mobil Corp. v. Saudi Basic Industries Corp.,
___ U.S. ___, 125 S.Ct. 1517 (2005) 8-18

FOCUS v. Allegheny Ct. of Common Pleas,
75 F.3d 834 (3d Cir. 1996) 9, 14

GASH Assocs. v. Village of Rosemont,
995 F.2d 726 (7th Cir. 1993) 11

In rè Estate of Royal,
289 B.R. 913 (N.D. Ill. 2003) 15

Cases (cont.)

In re Raleigh v. Haskell,
1998 WL 809520 (Bankr. N.D. Ill.) 15

ITT Corp. v. Intelnet International Corp.,
366 F.3d 205 (3d Cir. 2004) 14

Lemonds v. St. Louis County,
222 F.3d 488 (8th Cir. 2000) 14

Parkview Associates Partnership v. City of Lebanon,
225 F.3d 321 (3d Cir. 2000) 9

Republic of Paraguay v. Allen,
949 F.Supp. 1269 (E.D. Va. 1996) 14

Rooker v. Fidelity Trust Co.,
261 U.S. 114, 43 S.Ct. 288,
67 L.Ed. 556 (1923) 8

Stacey v. City of Hermitage,
789 A.2d 772 (Pa.Cmwlth. 2002) 3-7, 12

Stacey v. City of Hermitage,
569 Pa. 727, 806 A.2d 865 (2002) 8

T.W. & M.W. v. Brophy,
124 F.2d 893 (7th Cir. 1997) 14

Williams v. Adkinson,
792 F.Supp. 755 (M.D. Ala. 1992) 14

Constitution

U.S. CONST. amend. IV 2

U.S. CONST. amend. V 2

U.S. CONST. amend. XIV 2

Statutes

18 U.S.C. § 1961 2

28 U.S.C. § 1257 8

42 U.S.C. § 1983 2

18 Pa.C.S.A. § 911 2

18 Pa.C.S.A. § 4910 2

STATEMENT OF THE CASE

On November 6, 2002, Petitioners, Helen Stacey, now deceased, and her son, Raymond Stacey (collectively referred to herein as "the Staceys"), commenced this action in the U.S. District Court for the Western District of Pennsylvania. In the Complaint, the Staceys allege that Helen Stacey was the owner of certain property located in the City of Hermitage, Mercer County, Pennsylvania ("the Property"). The Staceys allege that Helen Stacey resided at the Property with her husband, Andrew Stacey, now deceased, until July 1, 1997, when they were ordered to vacate the Property because heavy rain had flooded the cellar. Raymond Stacey allegedly resided at the Property for much of his life and accumulated personal property at the Property. On or about November 7, 2000, after extensive legal proceedings in the Pennsylvania state courts, the City of Hermitage demolished the Property pursuant to a demolition notice that had been issued to the Staceys. The Staceys claim that the demolition of the Property occurred without providing the Staceys with due process. The Staceys sued various defendants in this case, ranging from the City of Hermitage, its lawyers, Stacey's former lawyers, the trial judge, the Prothonotary, and any person or entity who had any involvement with the demolition of Helen Stacey's property.

Although the federal Complaint does not clearly set forth each of the claims for relief, it appears that the following claims are asserted: (1) claims under the

Fourth, Fifth, Ninth, and Fourteenth Amendments pursuant to 42 U.S.C. §1983 (2) a civil conspiracy claim under RICO, 18 U.S.C. §1961, *et seq.*; and, (3) claims for violations of various Pennsylvania criminal statutes, 18 Pa.C.S. §911 and 18 Pa.C.S. §4910.

In the federal Complaint, the Staceys' allegations against Sereday are limited to the following:

> 15. Defendants Richard Sereday and Roseann Sereday, doing business as Sereday Excavating, ran a heavy equipment demolition operation out of their home in Masury, Ohio. Defendant City of Hermitage awarded them the contract to demolish plaintiffs (sic) family home, and as such the Seredays had a duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

In the Prayer for Relief, the Staceys request: (1) a declaration that Helen Stacey was entitled to an appeal as of right from the decree nisi issued to her in Pennsylvania state court; (2) an injunction prohibiting foreclosure on the City's lien and ordering the City to remove the lien for demolition charges; (3) judgment in the amount of $2,000,000; and (4) an award of costs and attorneys' fees.

Before the Staceys filed the federal court action on November 6, 2002, the Property was the subject of

litigation in various Pennsylvania state courts. The Court of Common Pleas of Mercer County, the Commonwealth Court of Pennsylvania, and the Pennsylvania Supreme Court have all reviewed, or have been asked to review, the legality of the demolition of the Property. *See Stacey v. City of Hermitage*, 789 A.2d 772 (Pa.Cmwlth. 2002), *appeal denied*, 569 Pa. 727, 806 A.2d 865 (2002), *cert. denied*, 123 S.Ct. 1784, 155 L.Ed.2d 666 (2003). The Pennsylvania Commonwealth Court aptly described the history of the state court action as follows:

> In 1997, the City informed [Helen] Stacey that her property was in violation of the City's property maintenance code and that, therefore, it was proceeding to have her property declared a public nuisance. In 1998, the City adopted a new property maintenance code, which mirrors the Building Officials and Code Administrators National Property Maintenance Code (BOCA Code). Consequently, the City notified [Helen] Stacey that her property was in violation of the BOCA Code and that any corrective action had to be completed within thirty days.
>
> [Helen] Stacey appealed to the City of Hermitage Board of Appeals (Board). The Board held a hearing on April 15, 1999 and, upon conclusion, determined that

Stacey's structure was an attractive nuisance, unsafe for human habitation, littered with rubbish or garbage and uncontrolled weed growth, a fire hazard and in danger of collapse.

[Helen] Stacey appealed. By order dated April 19, 2000, the trial court affirmed the Board's determination in all respects except one. It reversed the Board's determination that Stacey's property constituted a fire hazard. No appeal was taken from that order.

Thereafter, the City began proceedings to have the structure demolished. On June 1, 2000, the City informed [Helen] Stacey that she had the right to cure the structure's problems within thirty days and that if she failed to do so, demolition would follow. On June 30, 2000, Stacey's son, Raymond, requested an extension of time in which to complete the repairs. By that time, Raymond had distributed two loads of sand into the basement. ... The City denied Raymond's request for an extension of time.

On August 30, 2000, [Helen] Stacey filed a petition for special relief in the nature of a temporary injunction against the Board and the City. In her petition, [Helen]

> Stacey alleged that she was arbitrarily denied a hearing before the Board on the issue of demolition, that she was not notified of her right to appeal the City's decision to demolish her residence, and that the structure had value and could be restored. ....
>
> The trial court issued an order granting the temporary injunction and set a permanent injunction hearing for September 5, 2000. At the conclusion of the hearing, the trial court determined that 1) it was bound by its April 19, 2000 order concluding that the structure was unsafe, 2) it would be unreasonable to repair the structure where it would have to be taken down to the studs and 3), [Helen] Stacey was not entitled to a hearing before the Board because no timely appeal was filed. Accordingly, the trial court entered a decree nisi vacating the temporary injunction.
>
> [Helen] Stacey took exceptions to the decree nisi. On November 6, 2000, the trial court entered an order affirming its prior decree. The following day, November 7, 2000, the City demolished the structure. ...

Stacey, 789 A.2d at 773-774.

The Pennsylvania Commonwealth Court affirmed the decision of the Court of Common Pleas of Mercer County and held as follows:

> 1. Helen Stacey could not argue that the Board erred in concluding that her structure was an attractive nuisance, unsafe for human habitation, littered with rubbish or garbage and uncontrolled weed growth and in danger of collapse. The Board's determination was affirmed by the trial court's order and Helen Stacey's failure to appeal the trial court's order precluded her from challenging that determination before the Commonwealth Court, *Id.*, 789 A.2d at 774;
>
> 2. The record clearly demonstrated that Helen Stacey did not appeal the City's Notice of Demolition and, in fact, asked for an extension of time to make repairs. Therefore, the trial court's conclusion that Helen Stacey was not entitled to a hearing on the issue of demolition was correct, *Id.*, 789 A.2d at 775;
>
> 3. Helen Stacey's argument that the City denied her an opportunity to make repairs or sell her property were without merit because the record showed that Helen Stacey was on notice as early as 1997 that